subjected to questioning by an agent of the United States to maintain his silence and to refuse to answer questions, and you are not to draw any inference or consider the fact that either of these defendants that have done that, as hearing on the guilt of either of such defendants who may have done so.

It is not only proper, but it is the duty of an attorney to object to the introduction of evidence which he feels goes beyond and outside of the proper rules of evi-
1044 dence. When attorneys object, it is in pursuance of their duties as lawyers, and when the Court rules on those objections it is in accordance with the law. You will, therefore, not harbor prejudice against any attorneys or their clients who have objected to any evidence, nor draw any inference of desire for concealment because evidence has been ruled out. I can only assure you that my rulings have been made in an effort to comply with the established rules of law, and you will, therefore, disregard any evidence which has been ordered stricken from the record, and in arriving at your verdict, you will be governed entirely by the evidence which is in the record before you and by the law as I have given it to you in these instructions.

Neither by these instructions nor by anything the Court may have done or said during the trial, does or did the Court intimate or wish to be understood by the jury as giving an opinion as to what the evidence is in this case, or as to what is not the evidence, or as to what the facts are in this case, or as to what are not the facts, or as to what the Court thinks should be the finding of the jury in this case. It is exclusively for the jury to determine the
1045 facts from the evidence in the case, and having done so, to apply to such facts the law as stated in these instructions.

You should not allow sympathy or prejudice to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. Nor are you to concern yourselves with the matter of punishment in the event that the defendants or either of them are found guilty. The matter of punishment, in the event that the defendants or either of them is found guilty, is for the Court alone. It is your duty to pass upon the guilt or innocence of each of these defendants, and in that regard you

will take with you to your jury room the exhibits that have been received in evidence, and you will take with you also two sets of verdicts, each set containing three forms.

Upon arriving at your jury room you will elect one of your number foreman to preside over your deliberations, and you will deliberate until you arrive at a unanimous verdict.

A set of forms is provided for each defendant. There are three forms in each set. The first applies to the defendant, Kenneth C. Gordon. The first form reads:

1046 "We, the jury, find the defendant, Kenneth C. Gordon, guilty as charged in the indictment."

You will use that form if you should find the defendant guilty on all four counts of the indictment.

The next form reads,

"We, the jury, find the defendant, Kenneth C. Gordon, not guilty as charged in the indictment."

You will use that form if you find the defendant Gordon not guilty on all four counts of the indictment.

The third form reads,

"We, the jury, find the defendant Kenneth C. Gordon, guilty as charged in Count ..... of the indictment, and find the said defendant not guilty as charged in Count ..... of the indictment."

You will use that form if you find the defendant guilty on some counts, and not guilty on other counts, and the foreman will insert the numbers of the counts on which the defendant is found guilty and those on which he is found not guilty.

1047 The set of forms regarding the defendant, Kenneth J. MacLeod, read the same way and will be used the same way for that defendant.

Upon arriving at your verdict, the foreman will select the proper form to express your verdict, and will complete it, if it needs completion, and will sign the same first. The other eleven will sign after him.

The married ladies on the jury will please remember to sign your own names and not your husbands' names. Sign either Mrs. Mary Smith or Mary Smith, but please do not sign Mrs. John Smith, for example.

Opportunity will be given to counsel out of the hearing of the jury to object to the charge of the Court. Do counsel desire to be heard?

Step into Chambers with the Reporter.

(The following proceedings were had in Chambers out of the hearing and presence of the jury:)

The Court: Any objections on behalf of the Government?

Mr. Downing: No objections.

The Court: No objections on behalf of the govern-
1048 ment.

On behalf of the defendant Gordon?

Mr. Callaghan: I got one marked "R" here. The defendant submitted to your Honor an instruction as follows:

"You are hereby instructed that if you find from the evidence that any witness for the prosecution has been promised immunity or reward or has received immunity from prosecution for any testimony given by him in this case or anticipated immunity as a result of or dependent upon his testimony, then you are entitled to consider that fact in weighing his credibility and truthfulness as a witness. And the testimony of any such person so promised or given immunity or reward should be received with suspicion and considered and scrutinized with the very greatest of care and caution."

I request your Honor now to so charge the jury.

The Court: You object to my not having so charged the jury?

Mr. Callaghan: I object to your not having so
1049 charged the jury.

The Court: Any other objections?

Mr. Callaghan: At one point in the charge, your Honor referred to establishing the guilt or innocence of either or both defendants and that, I think, was with respect to Counts 2 and 4 of the indictment, when your Honor was telling the jury that it was necessary that the defendants must have guilty knowledge. And I think your Honor said to the jury that the knowledge was sufficient if it was shown to have been had by either. Your Honor changed it to either or both defendants. I think in the form given the charge was bad. I except to it.

The Court: Is that all?

Mr. Callaghan: Yes.

The Court: The objections are each and both overruled.

Objections on behalf of the defendant MacLeod.

Mr. Walsh: Your Honor, I object to the instruction given substantially as follows:

"Possession of property recently stolen, if unexplained, is a circumstance tending to show guilty
1050 knowledge on the part of the accused that the goods were stolen—"

It is my suggestion that "unexplained" should be followed by the words "by the facts and surrounding circumstances."

The Court: Do you object to the charge as given?

Mr. Walsh: I object to the charge as given.

The Court: Very well.

Mr. Callaghan: May I join in that? I intended to make an objection, to that. It is marked Government's instruction 6. I think that is the instruction as your Honor gave it:

"Possession of property recently stolen, if unexplained, is a circumstance tending to show guilty knowledge on the part of the accused that the goods were stolen, yet if the jury believe from the evidence that such defendant came honestly into the possession of the property, or that the possession by the accused is unconnected with any suspicious circumstances of guilt, this would be a satisfactory account of his possession, and would remove—"

1051 and so on. I think that that construction casts the burden of proof upon the defendants in this case, and I except to the giving of that instruction.

The Court: Objection overruled as to both defendants.

Mr. Walsh: To the same instruction, I would like to offer an objection to the other part included in that:

"or that the possession by the accused is unconnected with any suspicious circumstances of guilt—"

is giving the jury possible authority to find a verdict of guilty based merely on suspicious circumstances.

I object to the instruction on aiding and abetting, because it did not include the statement that such aiding and abetting must be done with the intent and knowledge necessary on the part of a principal.

I further object to the use of the word accomplice in the instruction concerning the testimony of a person who had testified to his part in the crime. The use of the word accomplice implies, accomplice implies guilt of the defendants who are on trial. It tends to take away from the jury to ultimate question of fact of their guilt.

1052 The Court: Any other objections?

Mr. Walsh: No.

The Court: The objections on behalf of the defendant MacLeod are each and all overruled.

(The following proceedings were had in the court room in the presence and hearing of the jury:)

The Court: The alternate juror Eleonore Weiss, is excused, and will leave the jury box and the jury room. I thank you for your attendance on the trial.

(Thereupon, the alternate juror, Eleonore Weiss, was excused.)

The Court: The Marshals will rise and be sworn.

(The Marshals were sworn)

The Court: Has the alternate juror left the jury room?

A Marshal: Yes, your Honor.

The Court: The jury will retire and deliberate upon its verdict.

(Thereupon, the jury retired to the jury room to 1053 consider of its verdict, and the following additional proceedings were had in the court room, out of the hearing and presence of the jury:)

The Court: Assemble the exhibits, gentlemen.

Mr. Callaghan: We have one.

The Court: That is that price exhibit. It was those index cards.

Mr. Callaghan: The tabs.

The Court: You better see that they are assembled.

Mr. Callaghan: Yes, your Honor.

The Court: What is the difficulty?

Mr. Callaghan: Only this, that on Government's exhibit 78, your Honor said he wouldn't permit in evidence any figures on the left hand side of that. That is all.

The Court: Yes.

Mr. Callaghan: Mr. Downing has left in "5.50 at". I think the "at" ought to be taken out and just leave the numbers.

The Court: Just the figures on the left hand side.

1054 Mr. Downing: I will be glad to.

Mr. Callaghan: Your Honor suggested cutting it in half.

The Court: The printing on the other side would not show. Just scratch out the word "at."

Mr. Callaghan: Everything except the figures on the left hand corner.

The Court: Right.

Mr. Downing: May the record show I am doing as has been suggested by the Court on Government's exhibit 78.

The Court: All right. Let me see it.

Mr. Downing: Yes, sir.

The Court: Exhibit 78 is now sufficiently obliterated.

Mr. Downing: This is Marshall, what he identified. They are looking at Government's exhibit 83, inquiring as to the notations made by what the witness, Marshall, testified, or his notations.

Mr. Callaghan: I think this document made 8-25-50, J.M., meaning James Marshall, we ask that be obliterated at the time "it is written evidence taken from me" and so on.

1055 The Court: Having heard you read it I can recognize it "taken from me 8-25-50, J.M." That can be scratched out. I do not see any reason for that being on. You can obliterate that and obliterating that, the rest of the exhibit will go in.

Mr. Downing: Let the record show I am obliterating as directed the portion of Government's exhibit 83.

The Court: The record may so show.

How about all of those exhibits?

Mr. Downing: Those ought to go in.

Mr. Walsh: This exhibit 91 shows "Mehegan, FBI, Wednesday, 4:30 p.m., 11-29-50" which is corroboration of his statement that they had found it on the floor there or something on that date. That was the date. This is the slip.

Mr. Downing: It is Mehegan's note.

The Court: Of course, you would object if the initials were not on or he did not initial it and put the date on. Then you would object to it. Now you object to it being on there. It is made up, where it says "Mehegan, FBI."

Mr. Callaghan: And the date.

Mr. Downing: It is no different than all of these 1056 other boxes where we have got the identifying initials and names.

Mr. Callaghan: We do not object to the initials on it alone.

Mr. Downing: What are you objecting to? That is just what is on there.

The Court: 4:30 p.m., 11-29.

Mr. Downing: That is the date.

The Court: Well, we will scratch out "Wednesday, 4:30 p.m." and leave "Mehegan, W.J.M." which I think was Mr. McCormick, "11-29-50," which appears there, we will scratch out the rest.

Any other objections?

Mr. Callaghan: Yes, if your Honor please. On Government's exhibits No. 72 and No. 73, there is some evidence in corroboration of the testimony of the witness Hawken. That, I think, ought to be obliterated before it goes to the jury.

Mr. Downing: I object to any obliteration. I think that is a perfectly proper record that was made in the regular course of business.

The Court: You object, do you?

Mr. Downing: Yes, I do.

Mr. Callaghan: On this trailer.

1057 The Court: I ruled on that at the time the exhibit was offered and overruled your objection. They have obliterated that which I ordered them to obliterate. Your objection is again overruled. The exhibits will go in in their present form. Have you got all the exhibits assembled now? You can take them into the jury, Mr. Marshal.

Mr. Downing: That includes the boxes.

The Court: They will go in. All exhibits received in evidence will go to the jury corrected as indicated.

Well, gentlemen, you better remain in attendance upon the Court. When and if the verdict is arrived at you will be telephoned at your offices and you can come back.

Mr. Callaghan: I was just going to ask you about that, what arrangements should be made.

The Court: Rather than staying in the court room, suppose you have your defendants with you or subject to telephone call, and leave your numbers where you will be, and be at that address so that if the Clerk calls you, you will be available.

Mr. Downing: May we go out to lunch?

The Court: Yes, but the jury will have their lunch
1058 served in the jury room. You may go out for lunch between 12:30 and 2. All right, then be available from 2 o'clock on. The jury will have their lunch in the jury room. We will recess now until the return of the jury.

(Thereupon, a recess was taken at 11 a.m., until 10:30 p.m. of the same day, and the following additional proceedings were had out of the presence and hearing of the jury)

The Court: Mr. Marshal, what is the present report from the jury, if any? Did you give them their dinner?

Marshall Shanahan: I did, your Honor.

The Court: No further report?

Marshall Shanahan: No. They can't get along, I guess.

The Court: Counsel are now advised that the jury having been out since 11:05 this morning, it now being 10:35 p.m., the Court will summon the jury to the jury room and deliver the charge in the Allen case.

I have here the charge in writing and counsel, I
1059 think, all of you are familiar with it. If you care to look at it, you may. It will be given exactly word for word as it is written here and as taken from Allen vs. United States, 164 U.S. 492, and at this time you may make such objections as you care to. Do you care to make any to the delivery of the charge?

Mr. Downing: The Government has no objection.

The Court: The Government has no objection. On behalf of the defendants?

Mr. Callaghan: The defendants object to it, if your Honor please.

The Court: You want to speak for both?

Mr. Callaghan: Yes.

The Court: On behalf of both defendants, Mr. Callaghan?

Mr. Callaghan: The defendants now severally and separately object to the giving of that charge on the ground that the charge is coercive in manner and giving of it would be most highly prejudicial to these defendants.

The Court: Do you have anything to add to it, Mr. Walsh?

Mr. Walsh: I object to the charge as outlined in
1060 the Allen case on the ground that it tells the jury that the case must some time be decided, which is not the fact nor the law, as I understand it.

Mr. Callaghan: Now, may it be understood, if your Honor please, that this objection will suffice and I need not make it in the presence of the jury, and except to the giving of the charge, and the record may show so the Government may take no advantage of an exception being made in the presence of the jury.

Mr. Downing: The Government will not make any advantage of it.

The Court: The record may show that no point is to be made of the fact that the objection or exception was not made in the presence of the jury.

At this time the Court will simply give the charge and again direct the jury to retire to the jury room. You will join me in the court room now, gentlemen.

Mr. Callaghan: May I respectfully add this also? You may get some inquiries from the jury, your Honor, also in the court room. They may ask your Honor questions and

I submit no questions should be answered to the jury,
1061 nor should any question be directed to the jury to ascertain how they stand.

The Court: Yes. I agree with you on that. I know that some judges inquire of the jury how they stand before giving the Allen charge. I don't think that is good practice.

Mr. Callaghan: It has been condemned.

The Court: I shall not inquire of the jury and if the jury asks for further instructions, counsel are advised so that it will be unnecessary for them to make the point in the court room, that if the jury asks for further instructions or asks any questions, the Court will advise them that the instructions they have already been given are sufficient and should guide their further deliberations.

Mr. Downing: That is agreeable with the Government.

The Court: All right.

Mr. Downing: I presume it is agreeable with the defendants.

The Court: They raised the point, certainly. Very good. All right.

(The following proceedings were had in the court
1062 room in the presence and hearing of the jury:)

The Court: Ladies and gentlemen, I have a further instruction to give you.

The mode provided by our Constitution and Laws for deciding questions of fact in cases such as this is by verdict of a jury. In a large proportion of cases and perhaps, strictly speaking, in all cases, absolute certainty cannot be attained or expected. Although the verdict to which each juror agrees must of course be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusions of his fellows, yet in order to bring 12 minds to a unanimous result, you must examine any ques-

tions submitted to you with candor and with a proper regard and deference to the opinions of others. You should consider that the case must at some time be decided; that you were selected in the same manner and from the same source from which any future jury must come, and there is no reason to suppose that the case will ever be submitted to 12 men and women more intelligent, more impartial or more competent to decide it, nor that more or clearer evidence will be produced on the one side or the other.

1063 With this in view it is your duty to decide the case, if you can conscientiously do so. In order to make it more practicable the law imposes the burden of proof on one party or the other in all cases. In the present case the burden is upon the Government to establish the guilt of the defendants beyond a reasonable doubt, and if you are left in doubt as to the guilt of the defendant, the defendant is entitled to the benefit of that doubt, and must be acquitted. But in conferring together you ought to pay proper respect to each other's opinions and reasons with a disposition to be convinced with each other's arguments, and on the one hand if much the larger number of you are for a conviction, the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the minds of so many men and women equally honest, equally intelligent, and who have heard the same evidence with the same attention, and with an equal desire to arrive at the truth and under the sanction of the same oath. And, on the other hand, if the majority of you are for acquittal the minority should equally ask themselves whether they may not reasonably and ought not to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are

1064 associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction in the minds of their fellows.

You will now return to your jury room and continue your deliberations. We will be in recess until return of the jury.

(Whereupon, at 10:45 p.m., a recess was taken until the return of the jury at 3:10 a.m., Friday, June 8, 1951, and the following additional proceedings were had in the court room, in the presence and hearing of the jury:)

The Court: I am informed you have arrived at a verdict, is that correct?

Foreman Harmer: We have arrived at a verdict, your Honor.

The Court: Would you deliver it to the Marshal, please? The Marshal will deliver it to the Clerk and the Clerk will read the verdict.

The Clerk: (reading)

"Verdict. We, the jury, find Kenneth C. Gordon, guilty as charged in the indictment." (Signed) Robert R. Harmer, Foreman, and 11 other jurors.

1065 "Verdict. We, the jury, find the defendant, Kenneth J. MacLeod, guilty as charged in the indictment." (Signed) Robert R. Harmer, Foreman, and 11 other jurors.

Mr. Walsh: The defendant MacLeod asks that the jury be polled.

The Court: Very well. The Clerk will poll the jury.

The Clerk: The jury, as his or her name is called, will be asked the question "Was this and is this now your verdict," and you will answer it was and it is, if that is the answer.

The Clerk: Betty F. Vatter, was this—

Mr. Callaghan: May I respectfully suggest that the juror be given an opportunity to answer in the alternative, if it is not?

The Court: Certainly.

The Clerk: Betty F. Vatter, was this and is this now your verdict?

Juror Vatter: It was and it is.

The Clerk: Edith Siegel, was this and is this now your verdict?

Juror Siegel: It was and it is.

1066 The Clerk: Norma Reszel, was this and is this now your verdict?

Juror Reszel: Yes, sir.

The Clerk: Mrs. Ida Potts, was this and is this now your verdict?

Juror Potts: Yes.

The Clerk: Samuel H. Newman, was this and is this now your verdict?

Juror Newman: It is.

The Clerk: Helen Lyman, was this and is this now your verdict?

Juror Lyman: It was and it is.

The Clerk: Joseph Gill, was this and is this now your verdict?

Juror Gill: It was and it is.

The Clerk: Raymond C. Eagan, was this and is this now your verdict?

Juror Eagan: It was and it is.

The Clerk: Ruth Fritz, was this and is this now your verdict?

Juror Fritz: Yes.

The Clerk: Emma Dreher, was this and is this now your verdict?

Juror Dreher: It was and it is.

1067 The Clerk: Anna Golditz, was this and is this now your verdict?

Juror Golditz: It was and it is.

The Clerk: Robert R. Harmer, was this and is this now your verdict?

Juror Harmer: It was and it is.

The Clerk: So say you all.

The Court: Judgment on the verdict.

Ladies and gentlemen, you are excused from further attendance at this Court. I want to thank you for your time and attention that you have given to the case. I think if you will leave your cards with the Marshal he will arrange for the payment of the jurors' fees, etc. And you better wait here and let Mr. Sutton and the jurors get out. The jury is excused from further attendance. Thank you very much.

(Thereupon, the jury was excused, and the following additional proceedings were had in the court room:)

Mr. Callaghan: The defendant Gordon, if your Honor please, moves for a judgment of acquittal, notwithstanding the verdict, and in the alternative that he be granted a new trial.

The Court: If you care to be heard in argument 1068 I will set a date for you.

Mr. Callaghan: Yes, your Honor.

Mr. Walsh: The same motion for defendant MacLeod.

The Court: We will set those motions for argument on a week from today, that is the 15th of June, at 2 p.m.

1071 Certificate of Court Reporter.

1082 And afterwards, to wit, on the 4th day of June, 1951, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

1083

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants in their own proper persons and by their counsel and the Jury and Alternate Juror heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and at the close of the evidence on behalf of the United States each defendant enters herein his motion that the Government produce the record of the Grand Jury hearing in this case and the Court having heard the arguments of counsel and being fully advised in the premises said motions are denied whereupon each defendant enters his motion for judgment of acquittal separately as to each count of the Indictment and the Court having heard the arguments of counsel and being fully advised in the premises said motions are denied and the hour of adjournment having arrived it is

ORDERED that the Jury and Alternate Juror be permitted to separate until 10 A.M. June 5, 1951.

1084 And afterwards on, to wit, the 5th day of June, 1951 there were filed in the Clerk's office of said Court certain Instructions submitted by defendant Gordon, in words and figures following, to wit:

1085

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

SUGGESTIONS FOR CHARGE TO THE JURY

Ladies and Gentlemen of the Jury:

The Grand Jury of this judicial district has returned an indictment against the defendants charging them with

offenses against the laws of the United States.

The defendants have entered a plea of not guilty. That means that they deny every material allegation in the Indictment.

1086 INDICTMENT NOT EVIDENCE:

The Indictment is not evidence and the jurors must not regard it as any evidence of the guilt of the defendants. It is not to be treated by you in any way as raising any kind of presumption or creating any kind of prejudice against the defendants. It is the mere paper or formal charge made by the Grand Jury. You must regard this Indictment in that light and in no other light. The defendants, until this trial was had, have not had an opportunity to answer the charges made in the Indictment.

PRESUMPTION OF INNOCENCE:

Every person charged with a criminal act is by the law presumed to be innocent of that charge; that the defendants are entitled to this presumption of innocence during your deliberations and until such time as the Goverment, by evidence, has convinced you beyond a reasonable doubt to the contrary.

By that I mean, this presumption of innocence was with the defendants not only when the Indictment was returned, when they were arraigned, when they pleaded and throughout the whole trial, but always, until such time as the evidence establishes to your satisfaction their guilt beyond a reasonable doubt. This presumption of innocence is no mere idle theory, to be cast aside by the jury through mere caprice, passion, or prejudice, but it is a substantial part of the law of the land, and follows the defendants throughout the entire case, and must not be lost sight of by the jury until it has been overcome by evidence which establishes the defendants guilt beyond all reasonable doubt, and to a moral certainty.

You should consider this presumption with all the other evidence in the case, weigh it carefully and if from such consideration of the evidence you have a reasonable doubt as to the guilt of the defendants, then you should find them not guilty.

1087 If upon a fair and impartial consideration of all the evidence in the case you find that there are two reasonable theories equally supported by the evidence and that one of such theories is consistent with the guilt of the de-

fendants, and the other is consistent with the innocence of the defendants, then it is the policy of the law, and the law makes it the duty of the jury to adopt that theory which is consistent with the innocence of the defendants, and to find the defendants not guilty.

BURDEN OF PROOF:

The Court instructs the jury that the number of witnesses alone testifying for one side or the other should not determine the question of the guilt, or innocence of the defendants, and simply because the prosecution may have produced more witnesses than the defense is no reason why you should believe that the prosecution has proven its case beyond all reasonable doubt. Before you can determine the guilt or innocence of the defendants, it is your duty to consider all the evidence, both that for the prosecution and that for the defense.

It is not sufficient to warrant a conviction of the defendants in this case, for the prosecution to awaken in your minds a suspicion that the defendants committed the offenses alleged in the Indictment. Neither is it sufficient for the prosecution to satisfy your minds that it is more probable that the defendants committed the offenses, or any offense mentioned in the Indictment, than that they did not. Before you are justified in finding the defendants guilty, the prosecution must go further and prove the alleged offense against the defendants beyond a reasonable doubt.

1088 You are instructed that any defendant is a competent witness in his own behalf; and you have no right to discredit his testimony from caprice or prejudice, nor merely because he is a defendant and stands charged with the commission of a crime. The law presumes the defendant to be innocent, until he is proven guilty, and the law allows him to testify in his own behalf, and the jury should fairly and impartially consider his testimony with all the other evidence in the case, and if, from all the evidence, the jury have any reasonable doubt as to the guilt of the defendant, they should give the defendant the benefit of such doubt and acquit him.

1089 WITNESSES:

The Court instructs the jury that if you believe from the evidence that any witness has wilfully and knowingly sworn falsely on this trial to any matter or thing material

to the issues in the case, then the jury are at liberty to disregard his or her entire testimony, except insofar, if at all, as it may have been corroborated by other credible evidence, or by facts and circumstances proved on the trial.

1090 The jury are instructed that the law, in regard to circumstantial evidence, is this: In order to justify a jury in finding a verdict of guilty based on circumstantial evidence, the circumstances must not only be consistent with the guilt of the defendant, but they must be inconsistent with any other reasonable hypothesis that can be predicated on the evidence; or, stated in another form, it is not sufficient that the circumstances proved coincide with, account for, and therefore render probable the hypothesis of guilt asserted by the prosecution, but they must exclude to a moral certainty and beyond a reasonable doubt, every other hypothesis but the single one of guilt, or the jury must find the defendant not guilty. In order to warrant a conviction of crime on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence beyond a reasonable doubt. All the facts necessary to the conclusion must be consistent with each other and with the main fact sought to be proved; and the circumstances, taken together, must be of a conclusive nature, leading on the whole to a satisfactory conclusion, and producing, in effect, a reasonable and moral certainty that the defendant committed the offense charged; and unless the evidence does so it will be your duty to acquit the defendant.

I charge you that if the evidence is circumstantial, the links in the chain of circumstances must be clearly proven and if taken together must point,—not to the possibility or probability,—but to the moral certainty of guilt and the inference which may be reasonably drawn from them must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence.

1091 Mere possession by a defendant of the articles mentioned in the Indictment is not sufficient for you to convict such defendant of the charge in this Indictment. Before you may convict the defendant you must find from the evidence beyond reasonable doubt that the defendant possessed the articles knowing them to have been stolen.

1092 Before you find any defendant guilty under Counts

1 and 3 in this case, it is incumbent upon the Government to prove beyond a reasonable doubt the following:

First: That the property in this case had been stolen;

Second: That the theft of the property was from the carrier described while the said property was moving as part of an interstate shipment of freight as alleged in the Indictment; and

Third: That the defendant possessed said property; and

Fourth: That at the time he possessed it that he knew the property was stolen.

1093. Before you can find any defendant guilty under Counts 1 and 3 of this Indictment, you must believe from all the evidence and beyond a reasonable doubt: That the goods described were stolen as charged; that at the time they were stolen, if you so find, they were moving as, or were part of, or constituted an interstate shipment of freight; that the goods, or some of them, came into the possession of such defendant; and that at the time they came into the possession of the defendant he knew that they were stolen goods.

1094 One of the methods of impeaching or impairing the testimony of a witness is to show that on a material point he has made other or different or conflicting statements at some other time and this is one of the matters you should take into consideration in considering the credibility of any witness.

1095 The essence of the crime charged in Counts 1 and 3 of this Indictment, that is, the charge of possessing goods stolen from interstate shipment, is guilty knowledge on the part of the accused that the goods were stolen. It is not a crime to possess stolen property. The crime consists in possessing it, knowing it to have been stolen, and you cannot find the defendants or either of them guilty unless you believe beyond a reasonable doubt that they knew that the goods were stolen.

1096 You should scrutinize very carefully the testimony of any witness who has turned "government witness" insofar as to incriminate himself, or with others in the offense charged. That evidence is not to be taken as that of an ordinary witness of good character. On the contrary the evidence of such a witness ought to be received with suspicion, and with the very greatest care and caution, and

ought not to be passed upon by the jury under the same rules governing other and apparently credible witnesses.

1097 The Court instructs you that before you would be justified in arriving at a verdict upon the uncorroborated testimony of the witness Marshall you should find this testimony to be clear and convincing and to possess the characteristics of truth, and together with all other evidence in the case, convince you beyond and to the exclusion of every reasonable doubt. You are directed to carefully weigh the testimony of the witness Marshall and you should not place undue reliance upon such testimony, unless after a careful examination of it, applying the tests I have stated, you are satisfied beyond a reasonable doubt of its truth.

1098 You are hereby instructed that if you find from the evidence that any witness for the prosecution has been promised immunity or reward or has received immunity from prosecution for any testimony given by him in this case or anticipated immunity as a result of or dependent upon his testimony, then you are entitled to consider that fact in weighing his credibility and truthfulness as a witness. And the testimony of any such person so promised or given immunity or reward should be received with suspicion and considered and scrutinized with the very greatest of care and caution.

1099 Testimony has been admitted in this trial by the witness Marshall as to an event which he says occurred on July 22, 1950. You are instructed that in so far as the defendant MacLeod is concerned, you are to completely disregard that testimony.

You are further instructed that you are not to consider such evidence against the defendant Gordon as any proof of the substantive offenses charged in this Indictment. The Indictment does not charge any offense against either of these defendants as occurring on July 22, 1950. Such testimony was admitted solely on the question of intent on the part of the defendant Gordon and any testimony of the witness Marshall as to that occurrence, if you believe it did occur, is to be considered by you for that purpose and for no other purpose.

1100 You are instructed that before you can find the defendants or either of them guilty under the charges

contained in Counts 2 and 4 of this Indictment, the Government must prove beyond a reasonable doubt each of the following items:

1. That the defendants knowingly transported in interstate commerce, that is, from the City of Chicago in the State of Illinois, to the City of Detroit in the State of Michigan, the merchandise described in those counts;
2. That the merchandise so transported had theretofore been stolen;
3. That the said merchandise at the time it was transported from Chicago, Illinois, to Detroit, Michigan, was of a value of more than $5,000.00;
4. And that the defendants, at the time the said merchandise was transported, knew that it was stolen merchandise.

If the Government fails to prove to your satisfaction beyond a reasonable doubt any of the aforementioned facts, you must find the defendants not guilty on the charges contained in Counts 2 and 4.

1101 The Court instructs the jury that if they believe from the evidence that any person was induced to become a witness and testify in this case by any promise of immunity from punishment or by any hope held out to him by any one that it would go easier with him in case he disclosed who his confederate was or in case he implicated some one else in the crime, then the jury should take such facts into consideration in determining the weight which ought to be given to his testimony thus obtained and given under the influence of such promise or hope.

1102 And on, the same day to wit, the 5th day of June, 1951 there were filed in the Clerk's office of said Court certain Instructions Submitted By Defendant Mac Leod, in words and figures following, to wit:

1103 The Court instructs the jury that the only charges pending against those Defendants, for determination by this jury, are the charges in the Indictment, and the jury is not to consider any evidence concerning film not mentioned in the Indictment, other than as a circumstance that may relate to the guilt or innocence of the Defendants with regard to the charges in the Counts of the Indictment.

You are instructed that the guilt or innocence of each Defendant is to be determined separately, and that the

guilt or innocence of each Defendant is to be determined separately on each count.

1104 You are instructed that certain evidence was admitted concerning the date of July 22, 1950, as against the Defendant GORDON and excluded as to the Defendant MC LEOD.

You are instructed that any evidence concerning July 22, 1950, is not to be considered by you as against the Defendant MC LEOD.

1105 The Court instructs the jury that the guilt or innocence of the Defendants is to be determined separately, and that as to each Defendant only that evidence which was admitted by the Court against the respective Defendant is to be considered in determining individual innocence or guilt.

1105½ You are instructed as to Counts Two (2) and Four (4) of the Indictment, that it is necessary that the Defendants knew and intended that the merchandise involved in said Counts was to be transported in interstate commerce from Chicago, Illinois to Detroit, Michigan, and that they, or either of them, actively participated in, and aided such transportation, with the knowledge and intent that it was to be transported in interstate commerce to Detroit, Michigan from Chicago, Illinois.

1106 The Court instructs the jury that in determining the value under Count Two (2) and Count (4), they should consider the language of the statute, which reads as follows:

> "'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares and merchandise, securities and money referred to in a single count shall constitute the value thereof."

In determining the value referred to, you should consider the testimony of the witnesses who testified as to value, their apparent knowledge of the value and their ability to know the facts about which they testified. You should consider their experience and familiarity with these matters. You are not required to accept any arbitrary or particular figures testified to unless you are convinced, beyond all reasonable doubt, that said figures truly represent the value of the film involved in the individual counts.

1107 The Court instructs the jury that the value of the merchandise involved in Counts two and four, is one of the elements involved in that offense, and that this element of the offense must be proved beyond reasonable doubt, as must every other essential element of the offense, that is, unless you are convinced from the evidence, beyond reasonable doubt, that the Defendants, or either of them, transported the film referred to in said Counts from Chicago, Illinois to Detroit, Michigan, and that said film at the time of said transportation was stolen, and that the Defendant, or Defendants, knew at the time of said transportation that said film was stolen, and it must be proved beyond reasonable doubt that said film had a value of $5,000.00 or more.

1108 And afterwards on, to wit, the 6th day of June, 1951 came the Defendant, Kenneth Gordon and Kenneth MacLeod, by their attorneys and filed in the Clerk's office of said Court their certain Motion in words and figures following, to wit:

1109

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

MOTION

Now come the defendants, by leave of Court first had and obtained, and file and make part of the record in this cause in support of their several motions for mistrial, the newspaper articles which have appeared in daily newspapers published in the City of Chicago since the beginning of this trial and shortly prior thereto.

Kenneth Gordon
Kenneth MacLeod
Defendants

1110 SUSPECT BALKS LIE TEST OVER WITNESS' DEATH

U.S. Court Refuses Delay in $12,000 Theft Case

Dwight L. Sweet, 26, of 2455 Dalton st., a bartender, changed his mind yesterday after agreeing to a lie detector test in the slaying of Albert Swartz, 43, of Ferndale, Mich., a jeweler and key witness in a Chicago stolen property trial.

He agreed, however, to waive extradition to Michigan for further questioning. Police Sgt. Hiram Phipps of Detroit, who came here, said he would send for extradition papers to make certain that Sweet does not back out.

$12,000 Camera Film Stolen

Swartz, indicted with two others for possessing $12,000 worth of camera film stolen in Chicago from an interstate shipment, pleaded guilty last April 10 and agreed to testify against his codefendants.

They are Kenneth Gordon, 28, of 515 Roscoe st., owner of the Liberal Jewelers, 21 East Adams st., and Kenneth J. MacLeod, 37, of 1150 Lake Shore dr., owner of a rooming house for girls. Both men have pleaded not guilty.

Sweet, arrested Tuesday night in a N. Clark st. tavern where he is bartender, denied complicity in Swartz' assassination. He said he was "out doing the town" with Gordon Wednesday night and early Thursday.

Delay in Trial Refused

Sgt. Phipps said a Dwight L. Sweet registered in the Tuller hotel in Detroit that night. Ferndale is a Detroit suburb. Phipps also said a draft card and driver's license issued to a Dwight L. Sweet were found two days later in a rented automobile left in a Detroit parking lot.

Judge William J. Campbell in federal District court yesterday refused to delay the trial of Gordon and MacLeod, set for Monday, but agreed to hear a motion to quash the indictment.

Defense Attorneys George C. Callaghan and Maurice J. Walsh sought the delay on the ground that publicity as to Swartz' slaying had made it impossible to get a fair trial of the camera film case now. The trial, first set for next month, was moved up at the government's request after Swartz was slain.

Prosecutor's Plea Denied

Judge Campbell also refused to raise bonds for Gordon and MacLeod from $2,500 to $25,000 each. Assistant United States Atty. Robert J. Downing, who cited the Swartz slaying in seeking the increase, admitted there was no "specific" evidence linking Gordon and MacLeod to the killing.

Downing also mentioned the wounding of James I. Marshall, 29, also of Ferndale and also a jeweler, last Nov. 20. Marshall is scheduled to testify against Gordon and

MacLeod. Downing said John Mundo, 37, a bartender, serving 15 to 30 years for the shooting, was an "associate" of Gordon.

U. S. TO SPEED TRIAL; 1 WITNESS ALREADY SLAIN

The government acted yesterday to speed up the trial of Kenneth Gordon, 28, of 518 Roscoe st., jeweler, and Kenneth MacLeod, 37, of 1150 Lake Shore dr., rooming house owner, on a charge of possessing $12,000 worth of photografic film stolen from a shipment last July 10.

Judge Michael L. Igoe in federal District court granted a request of Assistant United States Atty. Robert J. Downing for return of the case to the court's executive committee. The committee reassigned the case to Judge William Campbell and trial was set for next Monday.

Downing said the action was taken because Albert Swartz, 45, a defendant in the case, who had agreed to testify against the other defendants, was slain by unidentified assassins last Thursday in Ferndale, Mich. A government witness, James I. Marshall, 29, of Ferndale, a jeweler, who was wounded in a shooting last November, has been ordered put under guard until the trial.

TWO ARE IDENTIFIED AS POSSESSORS OF STOLEN CAMERA FILM

James I. Marshall, 33, of Highland Park, Mich., yesterday identified two defendants in a federal District court trial here as the men from whom 34 cases of stolen camera film had been obtained.

They are Kenneth Gordon, 28, of 515 Roscoe st., and Kenneth MacLeod, 37, of 1150 Lake Shore dr., who are on trial before Judge William J. Campbell and a jury on charges of possessing goods stolen from an interstate shipment.

Marshall pointed them out as the men from whom he and Albert Swartz, 43, a Detroit jeweler, obtained the film last July 20.

Gangland assassins slew Swartz outside his home on May 17, after he pleaded guilty tor possessing some of the film. It was part of $12,000 worth stolen from a truck

parked at 1833 S. Canal st. last July 10. Swartz had been expected to testify in the current trial that he received the film from Gordon and MacLeod.

JURORS CHOSEN IN STOLEN FILM TRIAL OF 2 MEN

A jury of eight women and four men was selected yesterday before Federal Judge William J. Campbell in the trial of Kenneth Gordon, 28, of 515 Roscoe st., and Kenneth MacLeod, 37, of 1150 N. Lake Shore dr., charged with possessing $12,000 in stolen camera film.

The trial was advanced two weeks ahead of its scheduled opening at the government's request after Albert F. Swartz, 43, a Ferndale, Mich., jeweler who had pleaded guilty to the same charge and was scheduled to testify against Gordon and MacLeod, was slain May 17 in gangland fashion outside his home. James I. Marshall, 29, a Ferndale jeweler who was wounded in a similar attack last Nov. 20, has been under guard since Swartz' death.

Government attorneys charged Gordon and MacLeod sold the film to Swartz and Marshall after it was stolen from a truck parked at 1833 S. Canal st., last July 20. The loot was part of a shipment valued at $27,423 consigned from the Eastman Kodak company, Rochester, N. Y., to its Chicago branch office.

1111

FBI AGENT TELLS OF USING WALKIE TALKIE IN SPYING

A jury in federal District court yesterday was regaled with the story of how a federal bureau of investigation agent, armed with a walkie talkie radio, spied on a rooming house at 215 E. Erie st. from a washroom in the Popular Mechanics building at 200 E. Ontario st.

The agent, Walter Higgs, was testifying in the trial of Kenneth Gordon, 28, of 515 Roscoe st., and Kenneth MacLeod, 37, of 1150 Lake Shore dr., on a charge of possessing a quantity of photografic film stolen from an interstate shipment.

Higgs testified that on July 27 last year he took up his post at the washroom window to watch the rooming house, which is jointly operated by Gordon and MacLeod. About 1 p. m., he said, an automobile drove up and MacLeod

opened the door of a garage attached to the rooming house and drove a truck out.

Car Goes In and Out

The automobile then was driven into the garage, and emerged a short time later with the trunk crammed with packages with the word "Kodak" on the side. The car drove away, and MacLeod drove the truck back into the garage.

Higgs said the automobile was driven by James I. Marshall, 29, a Ferndale, Mich., jeweler, who has pleaded guilty to possessing some of the stolen film. After Marshall entered his plea, he was shot and wounded, last Nov. 20.

With Marshall, Higgs said, was a man whom he later learned to be Albert Swartz, 43, also of Ferndale. Swartz was shot and killed near his home on May 17 after he had pleaded guilty to possessing the stolen film.

Radios Another Agent

As the automobile pulled away from the garage, Higgs testified, he flashed word, via his walkie talkie, to another FBI agent, Bruno W. Wilson, parked in an automobile nearby.

Wilson testified to following the car containing Marshall and Swartz to a point near Niles, Mich., where he lost it in traffic. Two other FBI agents, Norman S. Transeth and William A. Sullivan, testified to picking up the car a few miles west of Ann Arbor, Mich., and following it into Detroit. Next day they said they seized a quantity of stolen film in the basement of Marshall's jewelery store, and arrested both Marshall and Swartz.

The government rested at the conclusion of this testimony, and the court denied a motion for a directed verdict. Defense testimony will begin today.

Another Agent Testifies

Marshall has testified that he and Swartz obtained their film from Gordon and MacLeod.

Earlier, another FBI agent, William McCormick, told of a conversation he had last Nov. 8 with Gordon. McCormick quoted Gordon as saying "If I told you about everybody I'd sold stolen merchandise to in the city of Chicago it would involve a great many people."

George F. Callaghan, defense attorney, jumped up and asked for a mistrial, but his request was denied by Judge William J. Campbell.

The stolen film involved in the trial was part of a shipment from the Eastman Kodak company of Rochester, N. Y., to its Chicago branch.

STOLEN FILMS TRIAL SPEEDED TOWARD JURY

Two Chicago Defendants Deny Guilt on Stand

Closing arguments in the case of two men charged with possessing $12,000 worth of stolen photografic film will be heard before Judge William J. Campbell in federal District court today, with the probability that the case may go to the jury by nightfall.

The defendants are Kenneth Gordon, 28, of 515 Roscoe st., and Kenneth MacLeod, 37, of 1150 Lake Shore dr. The defense rested late yesterday after both defendants denied on the witness stand that they ever possessed the stolen film.

FBI Agents Watch Operation

The government's case included testimony of a federal bureau of investigation agent who secreted himself in a washroom of the Popular Mechanics building and saw part of the stolen film taken from a garage attached to a rooming house operated by MacLeod at 215 E. Erie st., in an automobile containing two Michigan jewelers, Albert Swartz, 43, and James I. Marshall, 29.

The agents testified that Swartz and Marshall drove to the rooming house, that the automobile was loaded and driven away. Other FBI agents trailed the car to Detroit.

One Jeweler Assassinated

Swartz and Marshall were arrested in Michigan. Both pleaded guilty to possessing the film. Both said they obtained it from MacLeod and Gordon, and Marshall so testified at the present trial. A short time after Swartz pleaded guilty, he was mysteriously shot and killed near his Ferndale, Mich., home. Marshall was shot and wounded, but recovered.

On the stand yesterday, Gordon said that Swartz asked him last July to find a garage where he could put his truck. Gordon said he sent Swartz to MacLeod.

The stolen films, belonging to the Eastman Kodak company, were part of a shipment from Rochester, N. Y., to the company's Chicago branch.

1112 And on the same day to wit, the 6th day of June, 1951 there was filed in the Clerk's office of said Court a certain Transcript Of Radio Broadcast in words and figures following, to wit:

1113 Funeral services are being arranged today for a five-year-old daughter of a Detroit jeweler who was slain two weeks ago before he could testify in a Chicago theft-ring case.

Doctors say Irene Swartz died yesterday of a chronic respiratory ailment. But police say they'll make sure she wasn't another victim of gangland reprisals.

The girl's father, 43-year-old Albert, was killed in the garage of his home May 17th, and police blamed the slaying on Chicago gunmen. He was to have turned state's evidence in the Chicago trial of 28-year-old Kenneth Gordon and Kenneth MacLeod for Interstate theft of a 12-thousand dollar film shipment.

Swartz widow has two other children.

1114 And on the same day to wit, the 6th day of June, 1951 there were filed in the Clerk's office of said Court two certain Additional Instructions submitted by defendants MacLeod and Gordon, respectively, in words and figures following, to wit:

1115 It is the right and privilege of a person who is being subjected to questioning by an agent of the United States to maintain his silence and to refuse to answer questions and you are not to engage in any inference or cosider that fact as bearing on the gift of any defendant who has done so.

1116 The value of the property which must be determined by you under Counts 2 and 4 of this Indictment, is the market value at the time of the alleged theft, if you believe beyond a reasonable doubt that it was stolen. You must find beyond a reasonable doubt that the value of the merchandise described in Count 2 was in excess of $5,000.00 before you can return a verdict of guilty on that Court. That applies also to Count 4 of the Indictment. If you find beyond a reasonable doubt that this property was stolen while in interstate commerce from the Eastman Kodak Company in Rochester, New York, to the Eastman Kodak Company in Chicago, Illinois, the value of this merchandise must be determined by you at its wholesale rather than its retail value.

1117 And on the same day to wit, on the 6th day of June, 1951, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

1118

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants in their own proper persons and by their counsel and the Jury and Alternate Juror heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and at the close of all the evidence each defendant enters herein his motion for judgment of acquittal as to each count of the Indictment separately which motions are entered and taken under advisement by the Court until after the return of the Jury's verdict and thereupon the Court rules on instructions submitted by counsel and the final arguments of counsel having been heard and concluded and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Juror be permitted to separate until 10 o'clock A.M. June 7, 1951.

1122 And on the same day to wit, on the 8th day of June, 1951, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the followings entry, to wit:

1123

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

This day again comes the United States by the United States Attorney came also the defendants Kenneth C. Gordon and Kenneth J. MacLeod in their own proper persons

and by their counsel and the Jury heretofore elected, empaneled and sworn herein for the trial of this cause also come and render their verdicts and upon their oath do say:

"We, the Jury, find the defendant, Kenneth J. MacLeod guilty as charged in the Indictment."

"We, the Jury, find the defendant, Kenneth C. Gordon guilty as charged in the Indictment."

and it is

Ordered that the defendants' motion for judgment of acquittal heretofore entered herein and their motions for a new trial be and the same are hereby set for hearing on June 15, 1951 at 2 o'clock P.M. and it is

Further Ordered that the defendants be and they are hereby released on their present bonds until disposition of said motions, said bonds to remain in full force and effect.

1124 And afterwards, to wit, on the 19th day of June, 1951, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following three entries, to wit:

1125

JUDGMENT AND COMMITMENT.

Criminal [1] Indictment.

On this 19th day of June, 1951, came the United States Attorney, and the defendant Kenneth J. MacLeod appearing in proper person, and [2] by counsel and,

The defendant having been convicted on [3] a verdict of guilty of the offense charged in the [1] Indictment in the above-entitled cause, to wit:[4]

> Unlawfully having in possession certain goods and chattels previously moving as part of an interstate shipment and knowing the same to have been stolen; transporting and causing to be transported in interstate commerce stolen merchandise

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized repre-

sentative for imprisonment for the period of [5] Ten (10) Years, or until said defendant is otherwise discharged as provided by law.[6]

It Is Further Ordered that [7] on motion of the defendant the execution of said sentence is stayed until noon, June 26, 1951. Surety on the bond having consented thereto, defendant's bond will stand in full force and effect.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[8]

(Signed) William J. Campbell
United States District Judge.

The Court recommends commitment to [9]

A True Copy. Certified this.....day of.....

(Signed).....(By).....

Clerk. Deputy Clerk.

1126

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

JUDGMENT AND COMMITMENT.

Criminal [1] Indictment.

On this 19th day of June, 1951, came the United States Attorney, and the defendant Kenneth C. Gordon appearing in proper person, and [2] by counsel and,

The defendant having been convicted on [3] a verdict of

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[1]Indictment or information. [2]Insert (a) "by counsel" or (b) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3]Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4]Name specific offense or offenses and specify counts upon which convicted. [5]Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6]Strike out if Court did not so order. [7]Indicate any order with respect to suspension and probation. [8]Certified copy to accompany defendant to institution. [9]For use of Court wishing to recommend a particular institution.

guilty of the offense charged in the[1] Indictment in the above-entitled cause, to wit:[4]

> Unlawfully having in possession certain goods and chattels previously moving as part of an interstate shipment and knowing the same to have been stolen; transporting and causing to be transported in interstate commerce stolen merchandise

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of[5] Ten (10) Years, or until said defendant is otherwise discharged as provided by law.[6]

It Is Further Ordered that[7] on motion of the defendant the execution of said sentence is stayed until noon, June 26, 1951. Surety on the bond having consented thereto, defendant's bond will stand in full force and effect.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[8]

(Signed) William J. Campbell
United States District Judge.

The Court recommends commitment to[9]

A True Copy. Certified this.....day of.....

(Signed).....,(By).....

Clerk. Deputy Clerk.

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[1]Indictment or information. [2]Insert (a) "by counsel" or (b) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. [3]Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. [4]Name specific offense or offenses and specify counts upon which convicted. [5]Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. [6]Strike out if Court did not so order. [7]Indicate any order with respect to suspension and probation. [8]Certified copy to accompany defendant to institution. [9]For use of Court wishing to recommend a particular institution.

1127

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

This cause coming on for hearing on the motions of the defendants for judgment of acquittal and motions for a new trial comes the United States by the United States Attorney come also the defendants Kenneth C. Gordon and Kenneth J. MacLeod in their own proper persons and by their counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

ORDERED that the motions of each defendant for judgment of acquittal and for a new trial be and the same are each and all denied.

1128 And on, the same day to wit, the 19th day of July, 1951 there were filed in the Clerk's office of said Court two certain Transcripts Of Proceedings Had June 22, 1951, Before The Honorable William J. Campbell, Judge, in words and figures following, to wit:

1154

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

TRANSCRIPT OF PROCEEDINGS

had at a hearing before the Honorable William J. Campbell, one of the Judges of said Court, in his Chambers, U. S. Court House, Chicago, Illinois, on Friday, June 22, 1951, at 11:45 o'clock, a.m.

Present:

Honorable Otto Kerner, Jr.,
U. S. District Attorney,
By: Robert J. Downing,
Assistant U. S. Attorney,
On behalf of Government;

Mr. George F. Callaghan,
On behalf of Defendant Gordon;

Mr. Maurice J. Walsh,
On behalf of Defendant MacLeod.

1155 The Court: Go on.

Mr. Walsh: Your Honor, this is the situation, that has developed. We have been formed that after the jury retires, your Honor sends the ordinary instructions to the jury.

The Court: That is correct.

Mr. Walsh: And after they have been written up by the Court Reporter.

The Court: That is right.

Mr. Walsh: As an actual matter of fact, I was not aware of that. The record did not show that as far as I know that they went to the jury in writing.

The Court: We can have the record so show.

Mr. Walsh: That is your Honor's custom?

The Court: Always, both civil and criminal cases.

Mr. Walsh: I might say that it is not the custom in all the courts in the building.

The Court: Some do and some do not. I always do.

Mr. Walsh: The Allen instruction was given at about 10:30 in the evening after the jury had retired at 11:00 o'clock, and in the colloquy before it was given, as I understood your Honor, and I think the record will
1156 show, although I do not have it with me, that your Honor stated: "This is what they will get. I will read this to them. That will be the end."

The Court: Word for word as it was in the copy that was shown you.

Mr. Walsh: Yes.

The Court: That is right.

Mr. Walsh: You did read the Allen instruction. What we are concerned about is whether or not, or what we desire to know is whether or not the written instruction went to the jury later and whether it went to them at their request or in the ordinary course of sending it to them.

The Court: You are entitled to know that. I will give you that information now on the record.

Following my usual instruction after I gave the first charge to the jury at 11:00 in the morning, just before they retired, the official reporter wrote up the charge to the jury. I checked it and found it accurate in connection with my notes and I think it was finished around 3 o'clock.

Mr. Callaghan: In the afternoon?

The Court: Three p.m. The court reporter finished the transcript of the charge as given at 11 a.m.
1157 and I gave it to the Marshal to bring into the jury room and that was done.

At 10:30 p.m. the same evening, the jury being in disagreement and having so advised the Marshal, I called counsel into Chambers and advised them of that, showed counsel the charge in the Allen case that I intended to then give to the jury. I called the jury back into the box in the presence of counsel, and then delivered that charge in the Allen case, as the record will show.

At 11:30 p.m. the same evening, the foreman of the jury rapped on the jury room door, and asked the Marshal if they could have a copy of the charge that the Court had just given at 10:30 p.m. I gave the Marshal the typewritten copy from which I had read.

Mr. Callaghan: Was your Honor still here when that was done?

The Court: Yes, I was here in Chambers. I gave the typewritten copy which I had read verbatim to the jury to the Marshal to deliver to the foreman. The Marshal went immediately from my Chambers to the jury room with the typewritten copy that I had given him and delivered it to the jury.

Does that answer your question?

1158 Mr. Walsh: Yes, Your Honor.

Mr. Callaghan: Has your Honor the typewritten copy?

The Court: It is right here. Do you want it?

Mr. Callaghan: I would like to examine it.

The Court: Wait a minute. Except that we have pasted back on the citation on the bottom of it, which I had torn off when it went to the jury. This much where you see was torn off.

Mr. Callaghan: Yes.

The Court: That went to the jury. This was not on, the citation at the bottom.

Mr. Callaghan: Yes.

The Court: Exactly what I had read there went to the jury.

Mr. Callaghan: The only reason I ask this, Judge, is this: I know that you frequently take our tendered instructions and the Government's tendered instructions and you will paraphrase them, take out parts, and so on. I wanted to be sure that is the actual copy that went to the jury.

The Court: That is it right there.

Mr. Callaghan: May the Court Reporter now make a copy of this to show this was the actual document
1159 that did go to the jury?

The Court: Certainly.

Mr. Callaghan: Not the citation of this part on the bottom. That was not included.

The Court: We tore it off; pasted it back on later, so that I can keep it in my file. This part here was torn off. The citation was torn off and this is what went to the jury and you may now copy this into your record.

Mr. Callaghan: Thank you.

The Court: When you finish, return it to me.

(The following is a copy of the instruction referred to above:)

"The mode provided by our Constitution and laws for deciding questions of fact in cases such as this is by verdict of a jury. In a large proportion of cases and perhaps, strictly speaking, in all cases, absolute certainty cannot be attained or expected. Although the verdict to which each juror agrees must of course be his own verdict, the result of his own convictions,
1160 and not a mere acquiescence in the conclusions of his fellows, yet in order to bring 12 minds to a unanimous result, you must examine any questions submitted to you with candor and with a proper regard and deference to the opinions of others. You should consider that the case must at some time be decided; that you were selected in the same manner and from the same source from which any future jury must come, and there is no reason to suppose that the case will ever be submitted to 12 men and women more intelligent, more

impartial or more competent to decide it, nor that more or clearer evidence will be produced on the one side or the other.

"With this in view it is your duty to decide the case, if you can conscientiously do so. In order to make it more practicable the law imposes the burden of proof on one party or the other in all cases. In the present case the burden is upon the Government to establish the guilt of the defendants beyond a reasonable doubt, and if you are left in doubt as to the guilt of the defendant, the defendant is entitled to the benefit of
1161 that doubt, and must be acquitted. But in conferring together you ought to pay proper respect to each other's opinions and reasons with a disposition to be convinced with each other's arguments, and on the one hand if much the larger number of you are for a conviction, the dissenting jurors should consider whether the doubt in their own minds is a reasonable one which makes no impression upon the minds of so many men and women equally honest, equally intelligent, and who have heard the same evidence with the same attention, and with an equal desire to arrive at the truth and under the sanction of the same oath. And, on the other hand, if the majority of you are for acquittal the minority should equally ask themselves whether they may not reasonably and ought not to doubt the correctness of the judgment which is not concurred in by a number of those with whom they are associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction in the minds of their fellows."

1162 The Court: Have you anything to say?

Mr. Downing: No, your Honor, not a thing. I think the instructions going to the jury is in keeping with what has been done.

The Court: It follows my standard procedure.

Mr. Downing: I think so, too, in the other Courts of the building.

Mr. Callaghan: I would like to say for the record that we were not advised that the charge was going to the jury, either of the charges, either the first charge or the Allen charge, and that both of those charges were sent to the jury out of the presence of the defendants.

Mr. Walsh: Or either counsel.

The Court: That is also following the usual procedure and I think you knew of it in other cases. I mean it is my standard policy.

Mr. Callaghan: I never knew that.

The Court: You have tried enough cases here to know. It is a standard policy to send the charge in both civil and criminal cases to the jury.

Mr. Downing: It is my experience in practicing here three and a half years.

1163 The Court: This is the only District I know of where some of the Judges do not.

Mr. Walsh: I should like to take an exception to the sending of the Allen supplemenal instruction by the Court to the jury.

The Court: You mean the Allen charge?

Mr. Walsh: To the jury, in writing, at their request, out of the presence of the defendants and their counsel, and the Government's counsel, for that matter, too.

Mr. Callaghan: I join in that.

The Court: The objections may be noted and are overruled.

(Which were all of the proceedings had at the hearing of the above entitled case.)

1164

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

CERTIFICATE

I hereby certify that the above and foregoing is a full, true and accurate transcript of my original shorthand notes taken upon the hearing of the above-entitled cause.

Paul A. Ruhe,
Paul A. Ruhe,
Official Court Reporter,
United States District Court,
Northern District of Illinois.

June 22, 1951.

1165 And afterwards on, to wit, the 22nd day of June, 1951 came the Defendants, Kenneth C. Gordon and Kenneth J. MacLeod, by their attorneys and filed in the Clerk's office of said Court their certain Notice Of Appeal, in words and figures following, to wit:

1166

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

NOTICE OF APPEAL

Name and address of Appellants:
Kenneth C. Gordon,
515 W. Roscoe Street,
Chicago, Illinois.
Kenneth J. MacLeod,
1150 N. Lake Shore Drive,
Chicago, Illinois.

Name and address of Appellants' Attorneys:
George F. Callaghan,
105 West Adams Street,
Chicago, Illinois.
Attorney for Kenneth C. Gordon
Maurice J. Walsh,
29 South La Salle Street,
Chicago, Illinois.
Attorney for Kenneth J. MacLeod

Offense: Possession of goods stolen from interstate commerce knowing the same to have been stolen (Violation of Section 659, Title 18); knowingly transporting in interstate commerce goods theretofore stolen at a value in excess of $5,000.00 (Violation of Section 2314, Title 18, United States Code).

Concise statement of judgment or order, giving date, and any sentence:
Judgment entered June 19, 1951.
Each of the defendants sentenced to the custody of the Attorney General for a period of ten (10) years;
General for a period of ten (10) years;

Name of institution where now confirmed, if not on bail: Defendants at liberty on bail in the amount of $2500.00 pursuant to stay of execution which expires June 26, 1951.

We, the above-named Appellants, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Dated: June 22, 1951.

George F. Callaghan
Maurice J. Walsh
Appellants Attorneys.

(Certificate of Mailing Attached Hereto):

1167

IN THE UNITED STATES DISTRICT COURT.

(Caption—No. 50 CR 641)

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on June 22, 1951, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Honorable Otto Kerner, Jr., U. S. Atty.
450 U. S. Court House
Chicago 4, Illinois
and
Hon. Kenneth J. Carrick, Clerk
U. S. Court Of Appeals, Seventh Circuit
1212 Lake Shore Drive
Chicago 10, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 22nd day of June, 1951.

(Seal)

Roy H. Johnson
Clerk

By Gizella Butcher
Deputy Clerk

1168 And on, to wit, the 2nd day of July, 1951 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Designation Of Record in words and figures following, to wit:

1169

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR.641) * *

DESIGNATION OF RECORD.

To:

Clerk of the United States District Court
Northern District of Illinois
Eastern Division

You are hereby requested on behalf of the Defendants herein, Kenneth C. Gordon and Kenneth J. MacLeod, to make a transcript of the record to be filed in the United States Court of Appeals for the Seventh Circuit pursuant to the appeal taken in the above entitled cause, and to include in said transcript of record the following:

1. Placita.
2. Statement in accordance with Rule 10 (b) of Court of Appeals Rules.
3. Indictment.
4. Motion to dismiss Indictment and Order denying same.
5. Pleas of "not guilty" by Defendants.
6. Order entered May 14, 1951, setting cause for trial on June 11, 1951, before Judge Michael L. Igoe.
7. Petition by Government to increase bail, re-assign cause and advance for trial, and Order of Judge Igoe thereon.
8. Petition of Defendants for continuance and Order of Judge Igoe thereon.
9. Order of Executive Committee re-assigning cause to Judge William J. Campbell and advancing cause for trial on May 28, 1951.
10. Order of Judge Campbell on Defendants' motion for continuance.
11. Motion for Bill of Particulars and Order thereon.
12. Government's response to motion for Bill of Particulars.

1170 13. Transcript of all proceedings beginning at Monday, May 28, 1951, at 2:00 P.M., to and inclusive of proceedings had on Friday, June 22, 1951, and all exhibits received in evidence.

14. Motions for mistrial during course of trial and Orders thereon.

15. Motions of Defendants for judgment of acquittal at close of Government's evidence and at close of all evidence, and Orders thereon.

15a. Verdict.

16. Refused instructons, tendered by the Defendants.

17. Motions for judgment of acquittal notwithstanding verdict and Order of Court thereon.

18. Judgment on verdict and sentence.

19. Notice of Appeal.

20. Designation of Record.

21. Such Orders as may be entered in connection with the preparation of this record and exhibits and transmittal thereof.

The said transcript is to be prepared as required by law and the rules of this Court and the Federal Rules of criminal procedure and is to be filed in the Office of the Clerk of the United States Court of Appeals for the Seventh Circuit at 1212 Lake Shore Drive, Chicago, Illinois, within the time provided by law, or extensions thereof as granted by Order of Court.

George F. Callaghan
George F. Callaghan, Attorney for
Kenneth C. Gordon
Maurice J. Walsh
Maurice J. Walsh, Attorney for
Kenneth J. MacLeod

Received a copy of this Designation
this 2nd day of July, 1951.
Otto Kerner, Jr.
United States Attorney

1171 And afterwards on, to wit, the 6th day of July, 1951 came the Appellee by its attorneys and filed in the Clerk's office of said Court its certain Notice in words and figures following, to wit:

1172

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

NOTICE.

To the Clerk of the Court:

In connection with the appeal in the above captioned matter, please be advised that pursuant to Rule 10(c) of the Rules of the United States Court of Appeals for the Seventh Circuit, the following information is herewith submitted:

Appellee:	United States of America
Appellee's Attorneys:	Otto Kerner, Jr. United States Attorney Robert J. Downing Assistant U. S. Attorney

Otto Kerner, Jr.
Otto Kerner, Jr.
United States Attorney

1173 And on the same day, to wit, the 6th day of July, 1951 came the Appellee by its attorneys and filed in the Clerk's office of said Court its certain Additional Designation Of Record To Be Incorporated In Record On Appeal in words and figures following, to wit:

1174

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

APPELLEE'S ADDITIONAL DESIGNATION OF RECORD TO BE INCORPORATED IN RECORD ON APPEAL.

To the Clerk of the Court:

The defendants-appellants have heretofore filed with this Court a Designation of Record to be contained in the record on the instant appeal.

Pursuant to Rules 75(a) and 75(d) of the Federal Rules of Civil Procedure and upon the failure of the defendants-appellants to designate the complete record and all the proceedings and evidence in the said cause, and upon the failure, to date, of the defendants-appellants to designate a concise statement of the points on which they intend to rely on the said appeal, the Plaintiff-Appellee hereby respectfully requests the additional portion of the record, as hereinbelow set forth, be contained in the record on appeal:

1. Complete transcript of the entire proceedings before Judge William J. Campbell, on Monday, May 28, 1951, so as to cover the complete examination of the jury panel.
2. Government's Exhibits 1 through 73, 75 through 88, 90 and 91, 93 through 98.
3. The entire instructions offered by each Defendants-Appellants, Kenneth C. Gordon and Kenneth J. MacLeod.

United States of America
By *Otto Kerner, Jr.*
Otto Kerner, Jr.
United States Attorney

1175 And afterwards, to wit, on the 27th day of July, 1951, being one of the days of the regular July term of said court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

1176

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

On motion of the defendants Kenneth C. Gordon and Kenneth J. MacLeod by their counsel and upon consent of the United States Attorney it is

ORDERED that the time of said defendants within which to file Transcript of Record in the United States Court of Appeals for the Seventh Circuit be and the same is hereby extended to September 5, 1951

1177 And afterwards on, to wit, the 1st day of August, 1951 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

1178

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

STIPULATION.

It Is Hereby Stipulated by and between Kenneth C. Gordon and Kenneth J. MacLeod, and the United States of America, by their respective attorneys, that the Transcript of Proceedings shall include therein a statement as follows:

That counsel for the parties examined the prospective jurors on their voir dire and each of the prospective jurors, including those who were accepted and sworn to try the issue, were asked the following questions:

1. Have you read or heard anything concerning the case to be tried or the parties involved?
2. Has any matter come to your attention which would prejudice you for or against any party or which would be considered by you in determining your verdict?

3. If any newspaper article or other publication occurring during the trial should come to your attention, would you permit it to affect your verdict, or would you consider such in any manner for or against any party to this proceeding?

That each juror, including those who were sworn to try the issue, answered the foregoing questions in the negative.

1179 That each of the parties to the proceeding accepted a jury to try the issue, the defendants and their counsel not having exhausted the peremptory challenges allowed them by law, or allowed to them by the trial judge.

It Is Agreed that the statement referred to above may be included in the Transcript of Proceedings, as contained in the Transcript of Record on appeal at the beginning of the Transcript of Proceedings.

Otto Kerner, Jr.
United States Attorney
Maurice J. Walsh
Maurice J. Walsh, Attorney for
Kenneth J. MacLeod
George F. Callaghan
George F. Callaghan, Attorney for
Kenneth C. Gordon

Dated:.....

1180 And afterwards on, to wit, the 4th day of September, 1951 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

1181

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

STIPULATION

It Is Hereby Stipulated by and between Kenneth C. Gordon and Kenneth J. MacLeod and the United States Of America, by their respective attorneys that in connection with the filing of the record in the instant appeal the following description of Government Exhibits 1 through 65 in evidence may be substituted in the said record in lieu

of the actual physical exhibits bearing the same number, all of which exhibits were a portion of the exhibits introduced into evidence by the United States of America in the trial of the instant cause:

Government Exhibit No.	Description
1	One full carton containing 50 Rolls (in boxes) 100 feet (each) 16 mm Kodachrome Commercial Safety Color Motion Picture Film each box containing thereon Emulsion Number 5268-176-0515. The carton bears the following printing on the outside thereof: (*on one end*) 50 Rolls, 100 feet, 16 mm Kodachrome Commercial. 5268-176-0515 CC1OM Cine-Kodak Safety Film. (*on one side*) Word "KODAK" printed in large yellow letters on a black background. The printed number "356". (*on one side*) Word "KODAK" printed in large yellow letters on a black background. (*on the top*) The printing "Eastman Kodak Co." c/o J. E. Brulator, Inc., 1727 Indiana Ave., Chicago 16, Illinois. (*on other end*) Initial in ink "WAS" and "HAS".
2.	One empty carton with the following printing on the outside thereof: (*on one end*) 50 Rolls 100 feet 16 MM Kodachrome Commercial. 5268-176-0515 CC1OM Cine-Kodak Safety Film (*on other end*) Initials in ink "WAS" and "HAS" (*on one side*) Word "Kodak" printed in large yellow letters on a black background. The printed number "355". (*on other side*) Word "KODAK" printed in large yellow letters on a black background.

(*on the top*) The printing "Eastman Kodak Co.", c/o J. E. Brulator, Inc., 1727 Indiana Ave., Chicago 16, Illinois.

3. One empty carton, same as Government Exhibit No. 2 above except the printed number on side of carton is "357".

4. One empty carton, same as Government Exhibit No. 2 above except the printed number on side of carton is "358".

5. One empty carton, same as Government Exhibit No. 2 above except the printed number on side of carton is "360".

6-7-8. Three empty cartons with the following printing on the outside of each thereof:

(*on one end*) 300 Rolls Kodak Film 116 Verichrome, Dec. 1951. Made in Rochester, N.Y. U.S.A. By Eastman Kodak Co. Trade Mark Reg. U.S. Patent Office.

(*on other end*) Initials in ink "AS" and "HAS".

(*on both sides*) Word "KODAK" printed in large yellow letters on a black background.

9. One empty carton, same as Government Exhibits 6-7-8 above except the initials in ink on one end are "RCM".

10 through 16. Seven empty cartons, same as Government Exhibits 6-7-8 above.

17 through 23. Seven empty cartons with the following printing on the outside of each thereof:

1183

(*on one end*) 100 Rolls 25 Feet 8 mm Kodachrome. Cine-Kodak Safety Film For Cine-Kodak eight Camera. Oct. 1951 Made in Rochester, N.Y. U.S.A. By Eastman Kodak Co. Trade Mark Reg. U.S. Patent Office.

(*on other end*) In ink name "Leo C. Shirley".

(*on both sides*) Word "KODAK" printed in large yellow letters on a black background.

24 & 25. Two empty cartons, same as Government Exhibits 17 through 23 except initials in ink on one end of "WAS" and "HAS".

26. One empty carton, same as Government Exhibits 17 through 23 except initials in ink on one end are "RCM".

27 through 43. 17 empty cartons, same as Government Exhibits 17 through 23 except initials in ink on one end of "WAS" and "HAS".

44. One empty carton, same as Government Exhibits 17 through 23 except initials in ink on one end are "RCM".

45 through 52. 8 empty cartons, same as Government Exhibits 17 through 23 except initials in ink on one end are "WAS" and "HAS".

53. One empty carton, same as Government Exhibits 17 through 23 except initials in ink on one end are "HEBS".

54 through 57. 4 full cartons—not opened—with the following printing on the outside of each thereof:

(*on one end*) 100 Rolls 25 Feet 8mm Kodachrome.

Cine-Kodak Safety Film For Cine-Kodak Eight Camera Oct. 1951. Made in Rochester, N.Y. U.S.A. By Eastman Kodak Co. Trade Mark Reg. U.S. Patent Office.

(*on other end*) In ink initials "HEBS" and "Al Swartz"

(*on both sides*) Word "KODAK" printed in large yellow letters on a black background.

58. One full carton open—less—7 rolls—with the same description as Government Exhibits 54 through 57.

59 & 60. 2 full cartons—not opened—same as Government Exhibits 54 through 57.

61. One full carton—not opened—same as Government Exhibits 54 through 57 except no ink initial "AL SWARTZ".

62 & 63. 2 full cartons—not opened—same as Government Exhibits 54 and 57.

64. One carton containing 100 rolls 116 Kodak Film Verichrome with the following printing on the outside of the carton:

(*on one end*) 300 Rolls Kodak Film 116 Verichrome. Dec. 1951. Made in Rochest-

er, N.Y. U.S.A. By Eastman Kodak Co. Trade Mark Reg. U.S. Patent Office.
(*on other end*) In ink initials "HEBS" and "AL SWARTZ".
(*on both sides*) Word "KODAK" printed in large yellow letters on a black background.

65. One empty carton, same as Government Exhibit 2 above except:
(*on one side*) the printed number is "359".
(*on one end*) the initials in ink are "HE BS" and "AL SWARTZ".

Otto Kerner, Jr.
United States Attorney

George F. Callaghan
George F. Callaghan
Attorney for Kenneth C. Gordon.

Maurice J. Walsh
Maurice J. Walsh
Attorney for Kenneth J. MacLeod.

1185 And afterwards, to wit, on the 5th day of September, 1951, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

1186

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

O R D E R

This cause having come on to be heard on motion of the attorneys for the Defendant-Appellants, and it appearing that there are a substantial number of exhibits which are not set forth in the transcript of evidence, and that the purposes of the Court and of the parties can be best served by inspection of the original exhibits;

It Is Therefore Ordered, Adjudged and Decreed that the original exhibits introduced on the trial of this cause, other than Government Exhibits 1 through 65, inclusive, be listed by the Clerk of the United States District Court, and that said list and exhibits in their original form be transmitted to the Clerk of the United States Court of Appeals for the Seventh Circuit, under the certificate and seal of the Clerk of the District Court, with the record on appeal in this cause.

Enter,

Campbell

Judge

Date September 5, 1951

1187 United States of America, } ss.
Northern District of Illinois }

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations and Stipulations of the parties herein filed in this Court in the cause entitled: United States Of America, Plaintiff, vs. Kenneth C. Gordon and Kenneth J. MacLeod, Defendants, No. 50 CR 641, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the original exhibits which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 5th day of September, 1951.

Seal

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed December 1, 1951, in:

Cause No. 10439.

United States of America,
Plaintiff-Appellee,

vs.

Kenneth C. Gordon and Kenneth J. MacLeod,
Defendants-Appellants,

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th day of June, A. D. 1952.

(Seal)

Kenneth J. Carrick,
Clerk of the United States Court of Appeals for the Seventh Circuit.

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and fifty, and of our Independence the one hundred and seventy-fifth:

United States of America, *Plaintiff-Appellee,* vs. Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
10439	

And, afterwards, to-wit, on the twenty-second day of June, 1951, there was filed in the office of the Clerk of this Court an Appearance of counsel for the appellants, which said Appearance is in the words and figures following, to-wit:

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago 10, Illinois.

Cause No. 10439.

United States of America,
Plaintiff-Appellee,
vs.
Kenneth C. Gordon and Kenneth J. MacLeod,
Defendants-Appellants.

The Clerk will enter our appearance as counsel for Defendants-Appellants.

George F. Callaghan,
105 West Adams Street,
Chicago, Illinois,
Maurice J. Walsh,
29 South LaSalle Street,
Chicago, Illinois.

Endorsed: Filed June 22, 1951. Kenneth J. Carrick, Clerk.

And afterwards, to-wit, on the twentieth day of February, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago 10, Illinois.

Wednesday, February 20, 1952.

Before:

Hon. J. Earl Major, Chief Judge,
Hon. F. Ryan Duffy, Circuit Judge,
Hon. Walter C. Lindley, Circuit Judge.

United States of America, *Plaintiff-Appellee,* vs. Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
10439	

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of record and briefs of counsel and on oral argument by Mr. George F. Callaghan, counsel for appellant, Kenneth C. Gordon, and Mr. Maurice J. Walsh, counsel for appellant, Kenneth J. MacLeod, and by Mr. Richard E. Gorman, counsel for the appellee, and the Court takes this matter under advisement.

And afterwards, to-wit, on the fourteenth day of May, 1952, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS.

For the Seventh Circuit.

No. 10439. October Term, 1951, January Session, 1952.

United States of America, *Plaintiff-Appellee,* vs. Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

May 14, 1952.

Before MAJOR, *Chief Judge* DUFFY and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Defendants were indicted on four counts, I and III of which averred their unlawful possession of goods stolen while in interstate commerce, in violation of 18 U. S. C. 659, and II and IV, that they caused the property mentioned in I and III to be transported further in interstate commerce in violation of 18 U. S. C. 2314. The jury found both defendants guilty, whereupon judgment entered, imposing upon each a sentence of ten years. This appeal followed.

Defendants assert that, (1), counts I and III are insufficient in law; (2), the proof is insufficient to support the verdict; (3), a fatal variance exists between the proof and the indictment; (4), defendants were unduly limited in cross-examination; and (5), the court erred in charging the jury.

We deem it unnecessary to comment at length on the proof adduced in support of the convictions. It is sufficient to say that, viewing the evidence, as this court must, in the

light most favorable to the government, the jury was completely justified in returning the verdicts, and all motions challenging the sufficiency of the proof and its alleged variance with the indictment were properly overruled. Also, assuming *arguendo* that counts I and III were defective in that they failed to allege the value of the goods unlawfully possessed, the conviction and resultant judgment should still stand, absent prejudicial error, for the verdict and sentences, being general, are supported by counts II and IV. *Claassen* v. *United States*, 142 U. S. 140, 147; *Evans* v. *United States*, 153 U. S. 608; *Hirabayashi* v. *United States*, 320 U. S. 81, 85; *De Jianne* v. *United States*, 282 Fed. 737 (CA-3).

Among the salient essential facts are the following. On July 10, 1950 a large quantity of camera film was stolen from an interstate shipment which had, as its origin, Rochester, New York and, as its destination, Chicago, Illinois. On July 20 and 27, 1950, in Chicago, certain portions of the film were observed in the possession of Gordon and MacLeod, being loaded into an automobile owned by James I. Marshall of Michigan. This man, accompanied by one Swartz, now deceased, then drove the car, loaded with film, from Chicago to Detroit. There a part of the merchandise was disposed of; the balance was eventually recovered. All four were charged with participation in the criminal undertaking. Marshall waived indictment and, on August 14, 1950, entered a plea of guilty to an information before the District Court in Detroit. Swartz and the two appellants were jointly indicted in the Northern District of Illinois. Later the charges against the deceased Swartz were dismissed.

Appellants' primary contention is that of alleged undue limitation imposed on their cross-examination of Marshall. While other proof tending to establish guilt of defendants was introduced, there can be no doubt that Marshall, an admitted accomplice, was an important witness. His testimony unequivocally established possession of the stolen film in Gordon on July 20 and in MacLeod on July 27, for he testified that on those dates the two defendants directed him and Swartz to the location of the stolen property and assisted in loading it into his automobile, which he then drove from Chicago to Detroit. Marshall was peculiarly the character of witness requiring the exercise of the most extended freedom of the right of cross-examination. *Greenbaum* v. *United States*, 80 F. 2d 113 (CA-9).

The trial court recognized this and extended extreme liberality to defendants in their efforts to weaken the witness' story. They were allowed to indulge in the all exploratory cross-examination suggested in *Alford* v. *United States*, 282 U. S. 687. However, in the course of the cross-examination, defendants elicited from Marshall, the information that, following his arrest by agents of the Federal Bureau of Investigation on July 28, 1950, he had made a statement concerning the details of the crime, in which he admitted he had in no way implicated either defendant. Furthermore, he admitted having later made four or five additional statements to the F. B. I. between that date and August 25, 1950. These statements varied from each other, he said, in some degree, and it was not until the last one, on August 25, that he, as he testified, in any way connected defendants with the undertaking. Upon evoking this information, defendants asked the court to "compel the government to produce that statement" (referring to the first one,) and "for the production of these statements," (referring to all of them). The court denied the requests.

The argument concerning this action upon the part of the trial court gives rise to several questions: Did the defendants take proper steps to bring about production of the evidence; does Rule 17(c) of the Federal Rules providing for the issuance of a subpoena duces tecum exclude other methods of securing production of documents; if the procedure adopted by defendants was proper, was it within the discretion of the trial court in such a situation as is presented here to refuse to order production of such documents, and certain subsidiary questions.

Rule 17(c) providing for a subpoena duces tecum does not of itself answer any of these inquiries, for it does not in so many words exclude other procedure. Rule 26 admonishes us to proceed in accord with the principles of the common law, in the light of reason and experience. Some federal courts have held that when production of pertinent documents in the possession of the United States Attorney is requested, it is the duty of the court to compel the production. Examples are *Boehm* v. *United States*, 123 F. 2d 791 (CA-8) cert. den. 315 U. S. 800; *Asgill* v. *United States*, 60 F. 2d 776, 779 (CA-4); *U. S.* v. *Krulewitch*, 145 F. 2d 76 (CA-2); *U. S.* v. *Toner, et al.*, 77 F. Supp. 908, 917 (E. D. Pa.), rev. on other grounds, 173 F. 2d 140, 143 (CA-3). *Cf. Bumey* v. *U. S.*, 193 F. 2d 694 (CA-DC); *Marin* v. *U. S.*, 10 F. 2d 271 (CA-6). Some of these cases were decided before

the Criminal Rules of Procedure were promulgated and some of them after that date.

Other courts have held that it is not always erroneous for the court to refuse to order production of such documents. In *Boehm* v. *U. S.*, 123 F. 2d 791 at 805, the court said: "The trial court's refusal to compel the production of statements made by the government's witnesses before other witnesses on occasions other than on the pending trial manifestly affected no constitutional right of appellant." See also *U. S.* v. *Toner, et al.*, 77 F. Supp. 908, reversed on other grounds in 173 F. 2d 143; *Goldman* v. *U. S.*, 316 U. S. 129; *Marin* v. *U. S.*, 10 F. 2d 271 (CA-6); *Chemical Specialties Co.* v. *Ciba Pharmaceutical Co.*, 10 F. R. D. 500; *U. S.* v. *Rosenfeld*, 57 F. 2d 74 (CA-2); *Carpenter* v. *Winn*, 221 U. S. 533; *Bundy* v. *U. S.*, 193 F. 2d 694 (CA-DC); *Little, et al.* v. *U. S.*, 93 F. 2d 401 (CA-8), certiorari denied 58 S. Ct. 643, 303 U. S. 644, 82 L. Ed. 1105, rehearing denied 58 S. Ct. 756, 757, 303 U. S. 668, 82 L. Ed. 1124; *Chevillard* v. *U. S.*, 155 F. 2d 929 (CA-9). Many courts have announced that it is only when the witness uses the document while on the witness stand to refresh his memory that the right to compel production exists. *Lennon* v. *U. S.*, 20 F. 2d 490 (CA-8); *Morris* v. *U. S.*, 149 F. 123 (CA-5).

However, in view of our conclusion, further consideration of this procedural question is unnecessary to a correct disposition of the alleged error. Thus, admitting for the purpose of this decision that issuance of a subpoena was not a necessary condition precedent to the court's power to compel production of the documents requested, we have left for disposition the crucial question of whether it was reversible error to deny the request here. We think the rationale of the authorities as we read them leads to the conclusion that on this record the court committed no error, certainly no prejudicial error, in refusing to require the government to produce the statements. In the first place, defendants made no adequate showing that the documents were in the possession of counsel for the government then before the court. Even had they been, their production was proposed, insofar as the court was advised, for the sole purpose of impeaching the witness by showing his previous contrary statements. But, so far as the evidence discloses, there was no contradiction between the statements and his cross-examination. He was exhaustively cross-examined by two able counsel, and freely admitted that he did not name Gordon or MacLeod in the statements first made to

the F. B. I. Had they been produced, showing, in this respect, the very fact to which he testified, they would not have amounted to impeachment and would not, therefore, have been admissible. Under these circumstances, we think the court did not abuse its discretion.

In *U. S.* v. *Krulewitch*, 145 F. 2d 76 (CA-2), cited in this connection by defendants, the decision was limited to a situation where the document definitely contradicted the witness' testimony. Here, in contrast, there is nothing to suggest any such impeaching value in the statements in question. See also *U. S.* v. *Ebeling*, 146 F. 2d 254 (CA-2); *U. S.* v. *Walker*, 190 F. 2d 481 (CA-2).

Nor were the statements relevant because of the mere fact that the witness had made them. He had not used them in testifying; he had not referred to them to refresh his recollection. "The better rule is that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them." *Goldman* v. *U. S.*, 316 U. S. 129, 132. It should be observed also that the Supreme Court in the case cited held that whether the government's files must be produced should in general be a matter for the determination of the trial judge. See also *D'Aquino* v. *U. S.*, 192 F. 2d 338 (CA-9).

Another aspect of defendants' cross-examination of Marshall requires consideration. It will be recalled that the witness had, on August 14, 1950, entered a plea of guilty before the District Court in Detroit, and that his case was then assigned to the Probation Officer for investigation. At the time of the trial no final disposition had been made of that cause.

On cross-examination it was brought out that the witness was an accomplice; that he had pleaded guilty to the same offense in the United States District Court in Michigan; that, though he had entered his plea some months before he testified in this trial, he had not yet been sentenced. He was interrogated at length concerning any promises of reward, leniency or consideration. The details appear in the footnote.[1] He testified that the United States Attorney had

1. The questions asked and answered by Mr. Marshall on cross-examination bearing upon this issue were in substance as follows:

Q. Had Mr. Scheer (the prosecuting attorney) promised you any immunity for your testimony which you were to give in any later proceedings?

A. No, there was never any promise.

Q. Had Mr. Schwartz (the witness's counsel) communicated to you any promise that had been given him by Mr. Scheer or the United States Attorney?

A. There was no promise.

not communicated to him and that his own attorney had not reported to him any promises that he would receive leniency or reward of any kind; that neither the United States Attorney nor any other person had, in the present case, made promises of any character to induce him to testify and that his own attorney had advised him not to do so.

After an extended cross-examination, defendants offered to prove that when he pleaded guilty in Detroit, the District Judge asked him, in open court, whether "anyone had promised him anything" to which he responded, "no"; "that he had not been forced to plead guilty"; that, thereupon, the court said, "very well, the plea of guilty is accepted. I am going to refer your case to the probation department for pre-sentence report. I think I should say to you, as I said to your attorney yesterday, * * * that it seemed to me that if you intended to plead guilty and expected a recommendation for a lenient sentence or for probation, it would be essential that you satisfy the probation department that you have given the authorities all the information, * * *. I am not holding any promises for you, but I think you would be well advised to tell the pro-

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Q. Do you know whether Mr. Smith made any promises to your counsel?
A. Not that I know of.
Q. Did Mr. Schwartz communicate any such promise to you?
A. No, he did not.
Q. Do you hope by your testimony here to get off easy in your case in Detroit?
A. No, sir.
Q. You have no hope of that at all?
A. No, sir.
Q. And you are not just trying to do the best for yourself here on the witness stand, are you?
A. No.

* * * * * * *

Q. Did Mr. Downing tell you that if you testified favorably in this case that he would suggest to the probation department in Detroit that you would receive favorable consideration?
A. No.
Q. Did anybody in the United States Attorney's Office in Chicago make that suggestion to you?
A. No.
Q. Did Mr. Mehegan or Mr. McCormick say anything like that to you?
A. No.
Q. And you have no hope of immunity or reward for the testimony you are giving in this courtroom?
A. No, sir.
Q. Did any person whomsoever suggest to you that if you cooperated with the authorities in this case and testify against others, you would receive consideration?
A. No, sir. My attorney told me not to testify.

* * * * * * *

Q. Did you tell the District Judge in Detroit after you entered your plea of guilty that you were not guilty?

bation authorities the whole story even though it might involve others." It was this evidence which the court refused to admit.

We do not see in the proffered proof anything of substantial interest to defendants beyond what had been brought out in Marshall's cross-examination. It had been proved that he had not yet been sentenced, that his case had been delayed for pre-sentence investigation, and that he had not up to that time involved either defendant. The offered proof amounted merely to what had already been admitted by the witness, all of which was undisputed. If there was anything in the circumstances that he had pleaded guilty and had not yet been sentenced, and that he did not involve the defendants until later, which the jury considered of importance in determining his credibility, it had before it his own admissions in that respect and nothing in the transcript disputed them or added anything of substance thereto. Of course the court advised him that he would be well advised to tell the complete story. That is what any defendant or witness should do.

A. I told him I was not guilty of receiving stolen property with the knowledge it was stolen.

* * * * *

Q. You are not a defendant in this proceeding?
A. No, sir.
Q. The only proceedings in which you were a defendant was in Detroit?
A. That is right, sir.
Q. It is over nine months now that your plea in Detroit has been pending and is undisposed of and you have not been sentenced, * * have you?
A. No, sir.
Q. There is not even a date set for your sentence?
A. I don't believe so.

* * * * *

Q. Is this a certified copy of the information to which you pleaded guilty in Detroit before Judge Levin?
A. I believe it is.

* * * * *

Q. You have stated on cross-examination that you have not been given any promises for your testimony?
A. That is right.
Q. Nor any promise of any immunity or reward, is that true?
A. That is true.
Q. But you have not been sentenced?
A. No, sir.
Q. Have you been given any threats in connection with testifying here?
A. No, sir.

* * * * *

Q. You have cooperated with the F. B. I. in this matter since your plea, have you not?
A. I think so.
Q. You think so, that is, you have done what they have requested you to do?
A. Yes, sir.

We can not believe that the failure to admit the transcript could, in the slightest degree, have prejudiced the jury which had before it the undisputed facts in this respect. Obviously, motives of a witness may be fully investigated on cross-examination, but this record reflects a most thorough cross-examination as to all Marshall's actions and motives. Obviously, likewise, the state of mind of the witness as he testified, was an important criterion of his motives, but that element of the witness' testimony had been vigorously and fully explored. The offered evidence threw no further light upon or impeached in any way what he had already said. In our view, under the circumstances, it was not prejudicial error for the court to exclude the transcript; it was not abuse of the discretion, concerning the scope and limitation of cross-examination, with which the trial court is endowed. *United States* v. *Hornstein*, 176 F. 2d 217.

We have considered carefully defendants' further contentions in regard to the limitations placed upon their cross-examination of Marshall and find no prejudicial error.

Defendants' final assignment of error concerns the court's instructions to the jury, both initially and in giving a supplemental charge similar to that approved in *Allen* v. *United States*, 164 U. S. 492. Reading the entire initial instructions as a whole, *United States* v. *Bucur*, No. 10429, decided January 15, 1952 (CA-7), no error appears. Though in certain instances, taken out of context, words appear which arguably were improper, these defects were cured when read in the setting which the court gave them.

The supplemental charge presents a slightly different problem. While it followed closely the words of the *Allen* decision, *supra*, it contained certain minor differences. Recently in *United States* v. *Furlong et al.*, 194 F. 2d 1 (CA-7), certiorari denied, this court had occasion to approve impliedly the continued use of the instruction. The charge there complained of directed the jury to examine the question with candor "and with a proper regard and deference to the opinions *of each other*" (emphasis supplied) as did the charge in the *Allen* case. Here, instead of the words italicized, there appear in the transcribed charge the phrase "of others." This difference, assert defendants, is vital, for, by virtue of it, the jury was advised to consider the opinions of other persons. We think the criticism overmeticulous and devoid of substance. The charge made it crystal clear that the jurors should consider the opinions

of each other and make every reasonable effort possible to reconcile any differences. They were advised that it was their convictions, *i. e.*, those of each of the panel, based upon the evidence, which should control and that the opinions of no witness and of no counsel was of the slightest importance or relevance. They could not have possibly been misled.

The court added also that the case "must at some time be decided." Strictly speaking, this was not true, for it is possible that no jury would ever agree. However we think the language was far from prejudicial error, for the court expressly explained that it was the jury's duty to decide the case, only if it could conscientiously do so.

We conclude that the court did not commit prejudicial error in its charge. However, we should observe that the Supreme Court, in the *Allen* case, fixed the extreme limits beyond which a trial court should not venture, in advising the jury as to its duty to attempt to agree.

The judgments are affirmed.

And on the same day, to-wit, on the fourteenth day of May, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Wednesday, May 14, 1952.

Hon. J. Earl Major, Chief Judge,
Hon. F. Ryan Duffy, Circuit Judge,
Hon. Walter C. Lindley, Circuit Judge.

United States of America, *Plaintiff-Appellee,* *vs.* Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

10439

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgments of the said District Court in this cause appealed from be, and the same are hereby, Affirmed.

And afterwards, to-wit, on the twenty-ninth day of May, 1952, there was filed in the office of the Clerk of this Court a Petition for Rehearing which said Petition for Rehearing is not copied herein.

And afterwards, to-wit, on the seventh day of June, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Saturday, June 7, 1952.

Before:

Hon. J. Earl Major, Chief Judge,
Hon. F. Ryan Duffy, Circuit Judge,
Hon. Walter C. Lindley, Circuit Judge.

United States of America, *Plaintiff-Appellee,* *vs.* Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

10459

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

And afterwards, to-wit, on the eleventh day of June, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Wednesday, June 11, 1952.

Before:

Hon. J. Earl Major, Chief Judge,
Hon. F. Ryan Duffy, Circuit Judge,
Hon. Walter C. Lindley, Circuit Judge.

United States of America, *Plaintiff-Appellee,* vs. Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
10439	

On motion of counsel for the appellants, it is ordered that the issuance of the mandate in the above entitled cause be, and the same is hereby, stayed for a period of thirty days from June 7, 1952 pursuant to the provisions of Rule 25 of the Rules of this Court.

And afterwards, to-wit, on the twentieth day of June, 1952, there was filed in the office of the Clerk of this Court a Praecipe for Transcript of Record which said Praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

United States of America, *Plaintiff-Appellee,* *vs.* Kenneth C. Gordon and Kenneth J. MacLeod, *Defendants-Appellants.*	No. 10439.

PRAECIPE FOR TRANSCRIPT OF RECORD.

Please prepare a transcript of the record in the above entitled cause in the matter of the petition for certiorari to the Supreme Court of the United States, and include in the transcript in the order given below the following:

Placita.

Appearance for appellants.

Printed transcript of record of proceedings had in District Court.

Oral argument had, and cause ordered taken under advisement, filed February 20, 1952.

Opinion by Lindley, J., filed May 14, 1952.

Judgment, entered May 14, 1952.

Reference to petition for rehearing, filed May 29, 1952.

Order denying rehearing, entered June 7, 1952.

Order staying mandate, entered June 11, 1952.

All to be prepared in accordance with the Statutes of the United States and the Rules of Court.

George F. Callaghan,
Maurice J. Walsh,
Attorneys.

Endorsed: Filed June 20, 1952. Kenneth J. Carrick, Clerk.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the papers filed and the proceedings had, made in accordance with the praecipe for transcript of record, filed June 20, 1952, in:

Cause No. 10439.

United States of America,
Plaintiff-Appellee,

vs.

Kenneth C. Gordon and Kenneth J. MacLeod,
Defendants-Appellants,

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th day of June, A. D. 1952.

Kenneth J. Carrick,
Clerk of the United States Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 182

KENNETH C. GORDON and KENNETH J. MACLEOD, Petitioners,

vs.

THE UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, limited to questions Nos. 2 and 3 presented by the petition for the writ.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.